

A Review of the Federal Policy for Conserving Species Listed or Proposed for Listing under the Endangered Species Act , While Providing and Enhancing Recreational Fisheries Opportunities

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Abstract- *On June 7, 1995, President Clinton signalled his strong support for recreational fishing as a valuable American past-time and important economic activity when he signed Presidential Executive Order (EO) 12962 (Appendix I). The EO recognizes the shared values of sport anglers and the broader conservation community and focuses Executive Branch attention on working with our partners on what can be done, instead of on what cannot. The EO is solidly based on an ecosystem approach and emphasizes habitat restoration as a key to sustainable recreational fisheries. One of several actions called for in the EO was the establishment of a joint U.S. Fish and Wildlife Service (USFWS) and National Marine Fisheries Service (NMFS) policy on Endangered Species Act (ESA) implementation that shared this focus with the recreational fishing community. The resultant policy (Appendix II) recognizes Tribal and State's rights to manage fish and wildlife and reaffirms federal trust and ESA responsibilities; but it also sets forth an ambitious agenda for change – in attitude and actions. The President has committed the NMFS and USFWS (jointly referred to as “the Services”) to working better together as well as with our non-federal partners on actions to help preclude the need to list; on listing decisions; on recovery planning and implementation; and beyond recovery to restoration of sustainable aquatic ecosystems that can support recreational fisheries. Within the framework of the ESA, the policy focuses on working with partners to take advantage of opportunities that will help both listed species and recreational fisheries now and in the future.*

Introduction

The Endangered Species Act specifically charges the Secretaries of the Interior and Commerce with the responsibility to identify, protect, manage, and recover species of plants and animals that are in danger of extinction. It is the first stated purpose of the ESA to provide a means to conserve the ecosystems upon which threatened and endangered species depend (16 U.S.C. Sec. 1531(1)). In addition to the ESA, many federal laws recognize the importance of aquatic resources (e.g., Fish and Wildlife Coordination Act, Anadromous Fish Conservation Act, Clean Water Act, Federal Aid in Sport Fish Restoration Act, Magnuson Fishery Conservation and Management Act, and the National Environmental Policy Act among others). These laws outline the roles of federal agencies to protect, restore, and conserve aquatic resources, and to provide for and enhance fisheries and recreational uses; some apply only to activities undertaken, permitted, licensed, or funded by a Federal agency.

Most of North America's aquatic ecosystems have been significantly altered by human impacts. Degraded habitats and nonnative species introductions have reduced the capacity of aquatic ecosystems to support their former diversity and abundance of native species. As of January 31, 1999, within the United States, 109 taxa of fish, 97 species of molluscs, and 16 species of amphibians were on the federal threatened or endangered species list. Habitat alteration and introduced species are, in fact, the two most frequently cited factors contributing to

population extirpation and decline among endangered and threatened fish species, including many native recreational fish species (see Lassuy 1995, reprinted in this same Proceedings). In 1996, the Oregon Chapter of the American Fisheries Society (AFS) recognized this pattern and recommended to the Oregon Fish and Game Commission that the Oregon Department of Fish and Wildlife adhere to the AFS protocol for introductions of aquatic species (Appendix III).

The Services recognize that fishery resources and aquatic ecosystems are integral components of our heritage and play an important role in the nation's social, cultural, and economic well-being. For example, nationwide in 1996, 35 million anglers (16 years and older) spent 626 million angler days afield, and nearly \$38 billion on tackle, equipment, food, lodging, and other recreational fishing-related expenses. In that same year in Oregon alone, 658,000 anglers spent nearly 8 million angler days afield and over \$620 million on these same expenses (DOI 1996).

In the past, resource managers may not have understood the effects of some management actions on ecosystems to the extent they do today. Habitat alteration and degradation, heavy fishing pressure, and introduction of non-native species often resulted in unexpected negative impacts to other ecosystem components. As today's managers realize more fully the impacts of their actions, they also realize that they must be more cautious in the activities they prescribe in natural ecosystems. The benefits gained by some actions may result in losses to non-target species or habitats. This has led to conflicts between some efforts to conserve native species and the ecosystems upon which they depend, and public expectations of aquatic resource managers to maintain and enhance recreational fishing opportunities. These issues have been of particular concern in those instances where the Services' responsibilities for recreational fisheries and recovery of federally protected species have presented conflicting options.

Successful future management of the Nation's aquatic resources must become more focused on an ecosystem approach. It will also require substantive cooperative partnerships and a willingness to resolve differences among federal, state, and Native American governments, and our private citizen partners. Executive Order 12962 and associated policy seek to provide a framework for federal participation in that process by clarifying our mutually recognized concerns and common goals.

EO and Policy Highlights

The purpose of EO 12962 is to conserve, restore, and enhance aquatic ecosystems to provide for increased recreational fishing opportunities nationwide. To accomplish this, the EO sets forth in its various sections the duties and expectations of federal agencies and outlines new mechanisms to move forward in achieving its purpose. Section 1 defines the duties of federal agencies under the EO and emphasizes the need to work with States, Tribes and others to improve aquatic resources for sustainable fishing opportunities. Section 2 creates the "Recreational Fishing Coordination Council," essentially a federal interagency council responsible for implementing the EO; and Section 5 creates the "Sport Fishing and Boating Partnership Council," a complementary forum for non-federal partners to contribute to EO implementation. Section 3 calls for the development of a "Recreational Fishery Resources Conservation Plan" to establish measurable objectives for aquatic ecosystem restoration and a mechanism for evaluating accomplishments. This plan has now been published and is available from any of the authors of this paper.

The focus of this paper, however, is on Section 4 of the EO which calls for the development of a joint (USFWS/NMFS) policy for administering the ESA. That policy (Appendix II) has now been completed and has already begun to prove a useful tool in melding the shared interests of the recreational fishing and broader conservation communities. The purpose of the joint policy is to promote compatibility and reduce conflicts between the administration of the ESA and recreational fisheries. The policy straightforwardly recognizes State and Tribal management jurisdictions, reaffirms federal trust and ESA responsibilities, and then describes activities to be undertaken to minimize and resolve conflicts.

The first outlined activity to help avoid or minimize conflict is to focus on mutually acceptable goals. One way to do this is to ensure consistency between the federal Services in our implementation of the ESA. For example, the Services now rely on a jointly-developed handbook

for ESA Section 7 consultation. This greatly reduces occasions where the public and public land managers appear to get “different answers” to the same questions. Other measures to identify and act upon mutually acceptable goals include promoting cooperative actions with our non-federal partners; coordinating with partners on ESA listing actions that may affect recreational fisheries (e.g., through ESA Sec. 4(d) rulings, or as NMFS did in working with the State of Oregon to improve the Oregon Plan); and by focusing ESA education and outreach efforts on those sections of the ESA that most directly impact our non-federal partners (e.g., Secs. 6, 9, and 10).

Another area emphasized in the joint policy that has proven very effective in focusing the Services, together with our partners, on reducing ESA and recreational fishing conflict has been to invite direct partner participation in a range of recovery and restoration activities. It is now required of the Services to involve partners in developing new ESA Recovery Plans for listed species. Existing recovery plans developed under the ESA are also routinely re-evaluated and the joint policy now directs that when such re-evaluation is undertaken, strategies be identified to minimize the impacts of recovery actions on recreational fisheries.

The joint policy also calls on the Services to encourage restoration on public and private lands that benefits both recreational fisheries and listed species (e.g., by focusing on habitat actions that will benefit both). Other partner participation encouraged under the joint policy includes partner coordination on reintroduction efforts – for example, the USFWS worked extensively with BLM, the Izaak Walton League, and local grazers on the possible reintroduction of Lahontan cutthroat trout to Oregon Canyon Creek in southeastern Oregon. The effort, unfortunately in the authors’ opinion, did not result in a reintroduction proceeding. However, the conclusion not to proceed was reached jointly and the process of working together has greatly improved partner relations on other conservation efforts.

Evaluations by the Services of the potential impacts of non-native species introductions must include analyses of the genetic, disease, competition, and predation impacts and, if listed species may be affected, also consider the impact the introduction may have on reaching recovery goals for such species. In many cases, this range of considerations had long been the practice of individual Service offices, but it is now required under the EO and resultant policy that the Services also consider the impact of the proposed introduction on recreational fisheries.

One of the most frustrating aspects of the “controversy” between recreational fishing and the ESA is how often this “us vs. them” portrayal obscures what are actually strong mutually beneficial interactions. For example, improving desert riparian habitat for a threatened neotropical migrant bird likely also improves conditions for the production (and thus catching!) of redband trout. The joint policy clearly recognizes this in calling on the Services to improve understanding of the relation between conservation and recreational fisheries. The policy highlights a range of existing mechanisms within the ESA that allow the Services to incorporate partner recommendations. However, perhaps the most important aspect of this part of the policy is that it calls on the Services to ask our partners to help identify actions that will benefit both ESA-listed species and recreational fisheries – not just to consider input that is offered during a public planning effort, but to go out and really ask for help. There is, in the authors’ opinion, a very big difference, even if only as a reflection of a change in attitude, between a “planning exercise” and openly and honestly asking someone for help. Rather than offering a polite opportunity to be heard, this truly says “we are partners in this deal, let’s see what we can come up with.”

Finally, the joint policy calls on the Services to be accountable by evaluating and reporting on the actions undertaken to implement the EO and this policy. Copies of the full reports produced in fulfillment of this portion of the policy are available from any of the authors. The following section highlights just a few of the important actions already taken.

EO and Policy Accomplishments

The broader EO calls for the Service to engage in a range of restoration, mitigation and public service actions. In fiscal year 1997 alone, USFWS-funded partner projects re-opened 149 stream miles to fish passage and restored 106 miles of instream habitat, 460 miles of riparian habitat, and 39,000 acres of wetland. USFWS hatcheries distributed over 120 million fish for mitigation and recreational purposes. The USFWS also funded extensive research and monitoring work on whirling disease and other fish pathogens and stocked native fishes on 80

National Wildlife Refuges to restore recreational fishing opportunities on Service-managed public lands.

Under the joint ESA policy, the USFWS participated in mass-marking projects to help protect threatened or endangered salmonids while simultaneously helping maintain harvest options. By taking strong, scientifically sound positions in FERC negotiations, during the development of Habitat Conservation Plans with major industries, and in other water management forums, the Services helped secure better flows for fish passage thus benefitting both listed and other recreational fisheries species. The USFWS provides technical assistance, and in some cases funding (e.g., under the Partners for Fish and Wildlife program), to private landowners to help them help streams – again, improving the lot of both listed species and recreational fisheries. The USFWS Endangered Species program also produced and distributed over 200,000 threatened Lahontan cutthroat trout, providing a direct benefit to both recreational fishing and education programs while simultaneously contributing to the recovery of this listed species.

Summary

Perhaps the some of the most useful “nuggets” to take away from this discussion of Executive Order 12962 on Recreational Fisheries and the resultant joint policy on the ESA and recreational fisheries are that while this policy did not change any laws, it should change some minds, and definitely reflects a change in attitude. The EO and joint policy do not “trump” the ESA. Take is still take and there will continue to be biologically sound, if unpopular, ESA-driven decisions. This baseline is what the law requires. However, the EO and joint policy clearly signal that the Administration recognizes that recreational fishing does not always cause the decline of ESA-listed species and that many, many opportunities exist to support both recreational fishing and the ESA at the same time. The joint policy openly calls on our partners to help us identify those opportunities and focuses on what is “do-able” – with particular emphasis on improving habitat and on making better decisions. Finally, it should be noted that on this latter point in particular, some of the major decisions of interest to those who focus on the interface of recreational fishing and the ESA are those relating to the management of non-native species. Since the workshop was convened, President Clinton has issued a new Executive Order (13112, Appendix IV) defining the federal government’s position and intent on “invasive species.” Implementation of EO 12962 and the joint policy will be fully consistent with this newest EO.

References

- Lassuy, D.R. 1995. Introduced species as a factor in extinction and endangerment of native fish species. pp. 391-396 *In*: H.L. Schramm and R.G. Piper, Uses and Effects of Cultured Fishes in Aquatic Ecosystems. American Fisheries Society Symposium 15.
- U.S. Department of the Interior, Fish and Wildlife Service and U.S. Department of Commerce, Bureau of the Census. 1996. National Survey of Fishing, Hunting, and Wildlife-Associated Recreation.

APPENDIX I

Recreational Fisheries

**Federal Register: June 9, 1995
(Volume 60, Number 111)**

Executive Order 12962

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in furtherance of the purposes of the Fish and Wildlife Act of 1956 (16 U.S.C. 742a-d, and e-j), the Fish and Wildlife Coordination Act (16 U.S.C. 661-666c), the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), and the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801-1882), and other pertinent statutes, and in order to conserve, restore, and enhance aquatic systems to provide for increased recreational fishing opportunities nationwide, it is ordered as follows:

Section 1. Federal Agency Duties. Federal agencies shall, to the extent permitted by law and where practicable, and in cooperation with States and Tribes, improve the quantity, function, sustainable productivity, and distribution of U.S. aquatic resources for increased recreational fishing opportunities by:

- (a) developing and encouraging partnerships between governments and the private sector to advance aquatic resource conservation and enhance recreational fishing opportunities;
- (b) identifying recreational fishing opportunities that are limited by water quality and habitat degradation and promoting restoration to support viable, healthy, and, where feasible, self-sustaining recreational fisheries;
- (c) fostering sound aquatic conservation and restoration endeavors to benefit recreational fisheries;
- (d) providing access to and promoting awareness of opportunities for public participation and enjoyment of U.S. recreational fishery resources;
- (e) supporting outreach programs designed to stimulate angler participation in the conservation and restoration of aquatic systems;
- (f) implementing laws under their purview in a manner that will conserve, restore, and enhance aquatic systems that support recreational fisheries;
- (g) establishing cost-share programs, under existing authorities, that match or exceed Federal funds with nonfederal contributions;
- (h) evaluating the effects of Federally funded, permitted, or authorized actions on aquatic systems and recreational fisheries and document those effects relative to the purpose of this order; and
- (i) assisting private landowners to conserve and enhance aquatic resources on their lands.

Section 2. National Recreational Fisheries Coordination Council. A National Recreational Fisheries Coordination Council ("Coordination Council") is hereby established. The Coordination Council shall consist of seven members, one member designated by each of the following Secretaries--Interior, Commerce, Agriculture, Energy, Transportation, and Defense--and one by the Administrator of the Environmental Protection Agency. The Coordination Council shall:

- (a) ensure that the social and economic values of healthy aquatic systems that support recreational fisheries are considered by Federal agencies in the course of their actions;
- (b) reduce duplicative and cost-inefficient programs among Federal agencies involved in conserving or managing recreational fisheries;
- (c) share the latest resource information and management technologies to assist in the

- conservation and management of recreational fisheries;
- (d) assess the implementation of the Conservation Plan required under section 3 of this order; and
- (e) develop a biennial report of accomplishments of the Conservation Plan.

The representatives designated by the Secretaries of Commerce and the Interior shall cochair the Coordination Council.

Section 3. Recreational Fishery Resources Conservation Plan.

- (a) Within 12 months of the date of this order, the Coordination Council, in cooperation with Federal agencies, States, and Tribes, and after consulting with the Federally chartered Sport Fishing and Boating Partnership Council, shall develop a comprehensive Recreational Fishery Resources Conservation Plan ("Conservation Plan").
- (b) The Conservation Plan will set forth a 5-year agenda for Federal agencies identified by the Coordination Council. In so doing, the Conservation Plan will establish, to the extent permitted by law and where practicable;

- (1) measurable objectives to conserve and restore aquatic systems that support viable and healthy recreational fishery resources,
- (2) actions to be taken by the identified Federal agencies,
- (3) a method of ensuring the accountability of such Federal agencies, and
- (4) a comprehensive mechanism to evaluate achievements. The Conservation Plan will, to the extent practicable, be integrated with existing plans and programs, reduce duplication, and will include recommended actions for cooperation with States, Tribes, conservation groups, and the recreational fisheries community.

Section 4. Joint Policy for Administering the Endangered Species Act of 1973. All Federal agencies will aggressively work to identify and minimize conflicts between recreational fisheries and their respective responsibilities under the Endangered Species Act of 1973 ("ESA") (16 U.S.C. 1531 et seq.). Within 6 months of the date of this order, the Fish and Wildlife Service and the National Marine Fisheries Service will promote compatibility and reduce conflicts between the administration of the ESA and recreational fisheries by developing a joint agency policy that will;

- (1) ensure consistency in the administration of the ESA between and within the two agencies,
- (2) promote collaboration with other Federal, State, and Tribal fisheries managers, and
- (3) improve and increase efforts to inform nonfederal entities of the requirements of the ESA.

Section 5. Sport Fishing and Boating Partnership Council. To assist in the implementation of this order, the Secretary of the Interior shall expand the role of the Sport Fishing and Boating Partnership Council to:

- (a) monitor specific Federal activities affecting aquatic systems and the recreational fisheries they support;
- (b) review and evaluate the relation of Federal policies and activities to the status and conditions of recreational fishery resources; and
- (c) prepare an annual report of its activities, findings, and recommendations for submission to the Coordination Council.

Section 6. Judicial Review. This order is intended only to improve the internal management of the executive branch and it is not intended to create any right, benefit or trust responsibility, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, or any other person.

BILL CLINTON, June 7, 1995

APPENDIX II

DEPARTMENT OF THE INTERIOR
Fish and Wildlife Service

DEPARTMENT OF COMMERCE
National Marine Fisheries Service

Notice of Policy for Conserving Species Listed or Proposed for Listing Under the Endangered Species Act While Providing and Enhancing Recreational Fisheries Opportunities

SUMMARY: The Fish and Wildlife Service and the National Marine Fisheries Service (Services) have adopted a policy that will address the conservation needs of species listed, or proposed to be listed, under the Endangered Species Act of 1973, as amended (ESA) while providing for the continuation and enhancement of recreational fisheries. This policy identifies measures the Services will take to ensure consistency in the administration of the ESA between and within the two agencies, promote collaboration with other Federal, State, and Tribal fisheries managers, and improve and increase efforts to inform nonfederal entities of the requirements of the ESA while enhancing recreational fisheries. This policy meets the requirements set forth in Section 4 of Executive Order 12962, Recreational Fisheries.

EFFECTIVE DATE: July 3, 1996.

ADDRESSES: The complete record pertaining to this action is available for inspection, by appointment, during normal business hours at the Division of Endangered Species, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 452, Arlington, Virginia 22203 (telephone 703/358-2171).

FOR FURTHER INFORMATION CONTACT: Chief, Division of Endangered Species, U.S. Fish and Wildlife Service (703/358-2171), or Director, Office of Protected Resources, National Marine Fisheries Service (301/713-1401).

The Policy

The Services recognize the primary responsibility of State and Tribal governments for the protection and management of fish, wildlife, and plant resources within their jurisdictions. The Federal government, however, has public trust responsibilities and statutory responsibilities to conserve endangered and threatened species listed under the ESA and, to that extent, this policy does not diminish or abrogate that responsibility particularly as it applies to section 6 (Cooperation With the States), section 7 (Interagency Cooperation), section 9 (Prohibited Acts), and section 10 (Exceptions). This policy is to affirm the Services' intent to minimize and resolve conflicts between implementation of the ESA and activities to enhance recreational fishery resources and recreational fishing opportunities. This will be accomplished through cooperative partnerships with other Federal agencies, State and local governments, Tribal governments, recreational fisheries interests, conservation organizations, industry, and other interested stakeholders. Activities to be undertaken by the Services with respect to implementation of the ESA include the following:

1. The Services will increase efforts to develop mutually accepted goals and objectives among the involved Federal agencies, States, Tribal governments, conservation organizations, recreational fisheries communities, and other interested entities for the conservation of listed species by:

- A. Ensuring consistency in ESA implementation between and within the Services;
- B. Promoting cooperative interaction with other Federal agencies, States, Tribal governments, conservation organizations, and recreational fisheries stakeholders at appropriate organizational levels in implementing the ESA;
- C. Promoting collaboration and information sharing among Federal agencies, States,

Tribal governments, conservation organizations and recreational fisheries stakeholders;

D. Coordinating with all affected stakeholders, partners, and interested parties throughout the decision-making processes on federally listed species issues that may affect recreational fisheries; and

E. Improving and increasing efforts to inform both Federal and non-Federal entities of the requirements of the ESA with particular reference to sections 6, 7, 9, and 10 of the ESA.

2. The Services will encourage participation of other Federal agencies, States, Tribal governments, conservation organizations, recreational fisheries stakeholders, and other interested parties in developing, implementing, and reviewing actions identified in approved recovery plans for listed species by:

A. Involving other Federal agencies, States, Tribal governments, conservation organizations, recreational fisheries stakeholders, and other affected or interested parties in recovery planning and implementation;

B. Encouraging proactive management and habitat conservation, restoration, and enhancement projects on public and private lands and waters to conserve federally listed or proposed aquatic species and to support similar measures to prevent further decline of species and loss of habitat to preclude the need to list additional species under the ESA;

C. Supporting management practices that are consistent with recovery objectives and compatible with existing recreational fisheries;

D. Identifying priorities for the restoration of aquatic habitats needed to conserve and recover federally listed and proposed species and, concurrently, to support increased recreational fishing opportunities to the extent possible;

E. Encouraging management actions that protect and conserve aquatic habitats, ecological processes and the diversity of aquatic communities;

F. Coordinating the reintroduction of listed species into former habitats within the species' historical range with other Federal agencies, States, Tribal governments, and other interested or affected entities, including recreational fisheries stakeholders;

G. Evaluating the potential impacts of proposed introductions of non-indigenous species or hybrids in drainages supporting federally listed or proposed species. Such introductions must be based on management plans incorporating genetics considerations, disease control, ecological principles, and listed species recovery objectives, as well as recreational fisheries and other socio-economic objectives;

H. Ensuring the effectiveness of actions taken to recover listed species and manage recreational fisheries by periodically evaluating conservation and recovery strategies and, where possible, adjusting those actions to minimize adverse effects on recreational fisheries;

I. Eliminating unnecessary recovery based restrictions affecting recreational fisheries. Priority will be given to cooperatively reviewing recovery based restrictions affecting recreational fisheries in areas currently unoccupied but within known historical range of listed species.

J. Encouraging States to increase their participation in listed aquatic endangered, threatened, and proposed species recovery through section 6 grants; and

K. Assisting the States and Tribal governments in meeting their recreational fishing goals.

3. The Services, in cooperation with other Federal agencies, State and local governments, Tribal governments, non-governmental organizations, and recreational fisheries stakeholders will provide the public with a better understanding of the relationship between conservation and recovery of federally listed and proposed species and recreational fisheries by:

A. Informing the fishing and non-fishing public about the ESA. Such efforts will include, but not be limited to, addressing topics such as the incidental take of listed species, the use of ESA 4(d) rules, habitat conservation planning, and other adaptive conservation tools;

B. Involving the public in identifying opportunities to enhance recreational fisheries while providing for the conservation of federally listed species, and in identifying and implementing solutions to aquatic systems degradation; and

C. Assisting to identify and provide, contingent on appropriations and other constraints, comparable alternative recreational angling opportunities when existing ones are altered or curtailed to meet objectives for conservation and recovery of federally listed or proposed species.

4. To meet particular mandates to conserve federally endangered, threatened, or proposed species while providing and enhancing recreational fishery resources and fishing opportunities, the Services will:

A. Work with the recreational fisheries community in evaluating accomplishments, including those of the Services, toward meeting the prescriptions of this policy; and

B. Restore and enhance aquatic habitats to conserve Federal endangered, threatened, and proposed species and increase recreational fishing opportunities consistent with agency missions, authorities, and initiatives.

Scope of Policy

This policy applies to all pertinent organizational elements of the Services and includes all efforts funded, authorized, or carried out by the Services relative to recreational fisheries and implementation of the ESA.

Author/Editor

The editors of this policy are David Harrelson of the Fish and Wildlife Service's Division of Endangered Species, Bob Batky of the Fish and Wildlife Service's Division of Fish Hatcheries, and Marta Nammack of the National Marine Fisheries Service's Endangered Species Division.

Authorities

Endangered Species Act of 1973, as amended (16 U.S.C. 1531-1544), Fish and Wildlife Act of 1956 (16 U.S.C. 742a-742j), Fish and Wildlife Coordination Act (16 U.S.C. 661-667e), Federal Water Project Recreation Act (16 U.S.C. 460 (L)(12)-460(L)(21), Federal Aid in Sport Fish Restoration Act (16 U.S.C. 777-777k), Anadromous Fish Conservation Act (16 U.S.C. 757a-757g), Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801-1862), National Environmental Policy Act of 1969 (42 U.S.C. 4321-4347).

Dated: May 14, 1996.

Mollie H. Beattie,

Director, U.S. Fish and Wildlife Service, Department of the Interior.

Dated: May 20, 1996.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

APPENDIX III

RESOLUTION OF THE OREGON CHAPTER AMERICAN FISHERIES SOCIETY 1996 ANNUAL MEETING

CONCERNING INTRODUCTIONS OF AQUATIC SPECIES IN OREGON¹

WHEREAS the Oregon Department of Fish and Wildlife (ODFW) has fishery management responsibility in the waters of the State of Oregon, and

WHEREAS ODFW has acknowledged a "major concern" with the introduction of nonnative species into the State of Oregon, and

WHEREAS it is the policy of the State of Oregon (State Law ORS 496.012) to prevent the serious depletion of any indigenous (native) species, and

WHEREAS the Oregon Fish and Wildlife Commission (Commission) has directed ODFW to draft administrative rules designed to protect native species, and

WHEREAS the effects of introduced species are second only to habitat degradation as a factor cited in the endangerment and extinction of North American fishes, and

WHEREAS the majority of the federal Endangered Species Act (ESA) listings for threatened or endangered fish species in the State of Oregon, and throughout the United States, have cited the detrimental impacts or continuing threats of nonnative species introduced for purposes of sport fishing (e.g., bait, forage, game) as a factor in the determination to list, and

WHEREAS the published position of the American Fisheries Society (AFS) on introduced aquatic species (copy appended) provides a professionally endorsed research, public review, and interjurisdictional consultation protocol (hereafter, AFS protocol),

THEREFORE BE IT RESOLVED THAT the Oregon Chapter of the AFS commend the Commission and ODFW for publicly recognizing and acting upon a major threat to the biological integrity of Oregon's aquatic ecosystems, and

THEREFORE BE IT RESOLVED THAT the Oregon Chapter of the AFS recommend that ODFW abide by standards for all species introductions that are at least as rigorous as the administrative rules that are adopted by the Commission for application to the public, and finally

THEREFORE BE IT RESOLVED THAT for introductions of aquatic species, the Oregon Chapter of the AFS recommend that ODFW adheres to the AFS protocol in its entirety.

¹ Source materials listed on following page.

The first three WHEREAS clauses are quoted from or directly based on information presented in the "Backgrounder" flyer entitled "Protecting the Integrity of Oregon's Native Species" that was provided by ODFW at a public informational meeting.

The second three WHEREAS clauses reflect information abstracted from:

Aquatic Nuisance Species Task Force. 1994. Report to Congress: Findings, conclusions, and recommendations of the Intentional Introductions Policy Review. 103rd U.S. Congress.

Lassuy, D.R. 1995. Introduced species as a factor in extinction and endangerment of native fish species. pp. 391-396. *In*: H.L. Schramm and R.G. Piper. Uses and Effects of Cultured Fishes in Aquatic Ecosystems. AFS Symposium #15.

Miller, R.R., J.D. Williams, and J.E. Williams. 1989. Extinctions of North American fishes during the last century. *Fisheries* 14(6):22-38.

U.S. Congressional Office of Technology Assessment. 1993. Harmful Nonindigenous Species in the United States. OTA-F-565.

For complete copy of AFS Protocol, see:

Kohler, C.C. and W.R. Courtenay, Jr. 1986. American Fisheries Society position on introductions of aquatic species. *Fisheries* 11(2):34-38.

APPENDIX IV

February 3, 1999

THE WHITE HOUSE

EXECUTIVE ORDER

13112

INVASIVE SPECIES

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.), Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990, as amended (16 U.S.C. 4701 et seq.), Lacey Act, as amended (18 U.S.C. 42), Federal Plant Pest Act (7 U.S.C. 150aa et seq.), Federal Noxious Weed Act of 1974, as amended (7 U.S.C. 2801 et seq.), Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.), and other pertinent statutes, to prevent the introduction of invasive species and provide for their control and to minimize the economic, ecological, and human health impacts that invasive species cause, it is ordered as follows:

Section 1. Definitions.

(a) "**Alien species**" means, with respect to a particular ecosystem, any species, including its seeds, eggs, spores, or other biological material capable of propagating that species, that is not native to that ecosystem.

(b) "**Control**" means, as appropriate, eradicating, suppressing, reducing, or managing invasive species populations, preventing spread of invasive species from areas where they are present, and taking steps such as restoration of native species and habitats to reduce the effects of invasive species and to prevent further invasions.

(c) "**Ecosystem**" means the complex of a community of organisms and its environment.

(d) "**Federal agency**" means an executive department or agency, but does not include independent establishments as defined by 5 U.S.C. 104.

(e) "**Introduction**" means the intentional or unintentional escape, release, dissemination, or placement of a species into an ecosystem as a result of human activity.

(f) "**Invasive species**" means an alien species whose introduction does or is likely to cause economic or environmental harm or harm to human health.

(g) "**Native species**" means, with respect to a particular ecosystem, a species that, other than as a result of an introduction, historically occurred or currently occurs in that ecosystem.

(h) "**Species**" means a group of organisms all of which have a high degree of physical and genetic similarity, generally interbreed only among themselves, and show persistent differences from members of allied groups of organisms.

(i) "**Stakeholders**" means, but is not limited to, State, tribal, and local government agencies, academic institutions, the scientific community, nongovernmental entities including environmental,

agricultural, and conservation organizations, trade groups, commercial interests, and private landowners.

(j) "**United States**" means the 50 States, the District of Columbia, Puerto Rico, Guam, and all possessions, territories, and the territorial sea of the United States.

Sec. 2. Federal Agency Duties.

(a) Each Federal agency whose actions may affect the status of invasive species shall, to the extent practicable and permitted by law,

(1) identify such actions;

(2) subject to the availability of appropriations, and within Administration budgetary limits, use relevant programs and authorities to: **(i)** prevent the introduction of invasive species; **(ii)** detect and respond rapidly to and control populations of such species in a cost-effective and environmentally sound manner; **(iii)** monitor invasive species populations accurately and reliably; **(iv)** provide for restoration of native species and habitat conditions in ecosystems that have been invaded; **(v)** conduct research on invasive species and develop technologies to prevent introduction and provide for environmentally sound control of invasive species; and **(vi)** promote public education on invasive species and the means to address them; and

(3) not authorize, fund, or carry out actions that it believes are likely to cause or promote the introduction or spread of invasive species in the United States or elsewhere unless, pursuant to guidelines that it has prescribed, the agency has determined and made public its determination that the benefits of such actions clearly outweigh the potential harm caused by invasive species; and that all feasible and prudent measures to minimize risk of harm will be taken in conjunction with the actions.

(b) Federal agencies shall pursue the duties set forth in this section in consultation with the Invasive Species Council, consistent with the Invasive Species Management Plan and in cooperation with stakeholders, as appropriate, and, as approved by the Department of State, when Federal agencies are working with international organizations and foreign nations.

Sec. 3. Invasive Species Council.

(a) An Invasive Species Council (Council) is hereby established whose members shall include the Secretary of State, the Secretary of the Treasury, the Secretary of Defense, the Secretary of the Interior, the Secretary of Agriculture, the Secretary of Commerce, the Secretary of Transportation, and the Administrator of the Environmental Protection Agency. The Council shall be Co-Chaired by the Secretary of the Interior, the Secretary of Agriculture, and the Secretary of Commerce. The Council may invite additional Federal agency representatives to be members, including representatives from subcabinet bureaus or offices with significant responsibilities concerning invasive species, and may prescribe special procedures for their participation. The Secretary of the Interior shall, with concurrence of the Co-Chairs, appoint an Executive Director of the Council and shall provide the staff and administrative support for the Council.

(b) The Secretary of the Interior shall establish an advisory committee under the Federal Advisory Committee Act, 5 U.S.C. App., to provide information and advice for consideration by the Council, and shall, after consultation with other members of the Council, appoint members of the advisory committee representing stakeholders. Among other things, the advisory committee shall recommend plans and actions at local, tribal, State, regional, and ecosystem-based levels to achieve the goals and objectives of the Management Plan in section 5 of this order. The advisory committee shall act in cooperation with stakeholders and existing organizations addressing invasive species. The Department of the Interior shall provide the administrative and financial support for the advisory committee.

Sec. 4. Duties of the Invasive Species Council.

The Invasive Species Council shall provide national leadership regarding invasive species, and shall:

(a) oversee the implementation of this order and see that the Federal agency activities concerning invasive species are coordinated, complementary, cost-efficient, and effective, relying to the extent feasible and appropriate on existing organizations addressing invasive species, such as the Aquatic Nuisance Species Task Force, the Federal Interagency Committee for the Management of Noxious and Exotic Weeds, and the Committee on Environment and Natural Resources;

(b) encourage planning and action at local, tribal, State, regional, and ecosystem-based levels to achieve the goals and objectives of the Management Plan in section 5 of this order, in cooperation with stakeholders and existing organizations addressing invasive species;

(c) develop recommendations for international cooperation in addressing invasive species;

(d) develop, in consultation with the Council on Environmental Quality, guidance to Federal agencies pursuant to the National Environmental Policy Act on prevention and control of invasive species, including the procurement, use, and maintenance of native species as they affect invasive species;

(e) facilitate development of a coordinated network among Federal agencies to document, evaluate, and monitor impacts from invasive species on the economy, the environment, and human health;

(f) facilitate establishment of a coordinated, up-to-date information-sharing system that utilizes, to the greatest extent practicable, the Internet; this system shall facilitate access to and exchange of information concerning invasive species, including, but not limited to, information on distribution and abundance of invasive species; life histories of such species and invasive characteristics; economic, environmental, and human health impacts; management techniques, and laws and programs for management, research, and public education; and

(g) prepare and issue a national Invasive Species Management Plan as set forth in section 5 of this order.

Sec. 5. Invasive Species Management Plan.

(a) Within 18 months after issuance of this order, the Council shall prepare and issue the first edition of a National Invasive Species Management Plan (Management Plan), which shall detail and recommend performance-oriented goals and objectives and specific measures of success for Federal agency efforts concerning invasive species. The Management Plan shall recommend specific objectives and measures for carrying out each of the Federal agency duties established in section 2(a) of this order and shall set forth steps to be taken by the Council to carry out the duties assigned to it under section 4 of this order. The Management Plan shall be developed through a public process and in consultation with Federal agencies and stakeholders.

(b) The first edition of the Management Plan shall include a review of existing and prospective approaches and authorities for preventing the introduction and spread of invasive species, including those for identifying pathways by which invasive species are introduced and for minimizing the risk of introductions via those pathways, and shall identify research needs and recommend measures to minimize the risk that introductions will occur. Such recommended measures shall provide for a science-based process to evaluate risks associated with introduction and spread of invasive species and a coordinated and systematic risk-based process to identify, monitor, and interdict pathways that may be involved in the introduction of invasive species. If recommended measures are not authorized by current law, the Council shall develop and recommend to the President through its Co-Chairs legislative proposals for necessary changes in authority.

(c) The Council shall update the Management Plan biennially and shall concurrently evaluate and report on success in achieving the goals and objectives set forth in the Management Plan. The Management Plan shall identify the personnel, other resources, and additional levels of coordination needed to achieve the Management Plan's identified goals and objectives, and the Council shall provide each edition of the Management Plan and each report on it to the Office of Management and Budget. Within 18 months after measures have been recommended by the Council in any edition of the Management Plan, each Federal agency whose action is required to implement such measures shall either take the action recommended or shall provide the Council with an explanation of why the action is not feasible. The Council shall assess the effectiveness of this order no less than once each 5 years after the order is issued and shall report to the Office of Management and Budget on whether the order should be revised.

Sec. 6. Judicial Review and Administration.

(a) This order is intended only to improve the internal management of the executive branch and is not intended to create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, or any other person.

(b) Executive Order 11987 of May 24, 1977, is hereby revoked.

(c) The requirements of this order do not affect the obligations of Federal agencies under 16 U.S.C. 4713 with respect to ballast water programs.

(d) The requirements of section 2(a)(3) of this order shall not apply to any action of the Department of State or Department of Defense if the Secretary of State or the Secretary of Defense finds that exemption from such requirements is necessary for foreign policy or national security reasons.

WILLIAM J. CLINTON

THE WHITE HOUSE,
February 3, 1999.